

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Case No. 21-cr-250 (JRT/TNL)

Plaintiff,

v.

**ARRAIGNMENT NOTICE
&
ORDER**

Jing Chen (1),
Ying Chen (2).
Li Yang (3), and
Xinhua Xiong (4),

Defendants.

This matter comes before the Court on motions for extension of time filed by Defendants Ying Chen, Li Yang, and Xinhua Xiong. ECF Nos. 118, 120, 122. Defendants Ying Chen, Li Yang, and Xinhua Xiong have also each filed a statement of facts in support of their respective motions. ECF Nos. 119, 121, 123. This matter was previously designated complex under 18 U.S.C. § 3161(h)(7)(B)(iv). ECF No. 104.

A status conference with counsel was held on August 17, 2022. ECF No. 126. Laura Provinzino appeared on behalf of the Government. Lauren Campoli appeared on behalf of Defendant Jing Chen. Jean Brandl appeared on behalf of Defendant Ying Chen. Glenn Bruder appeared on behalf of Defendant Li Yang. Daniel Le appeared on behalf of Defendant Xinhua Xiong. At the status conference, the Government agreed to make available to Defendants “hot documents” and the transcript of the grand jury proceedings as well as any exhibit list and exhibits introduced in those proceedings to the extent such a list was used or any exhibits were introduced. Further, as a result of the status conference,

the Court will set a hearing and deadlines on Defendant Jing Chen's Motion to Dismiss for Pre-Indictment Delay, ECF No. 24, and Amended Motion to Dismiss for Pre-Indictment Delay, ECF No. 80, separate and apart from the hearing and deadlines on other pending and anticipated pretrial motions in this matter.

As for the extension sought by Defendants Ying Chen, Li Yang, and Xinhua Xiong, Defendants Ying Chen, Li Yang, and Xinhua Xiong seek an additional 60-day extension of the deadline for filing pretrial motions based on, among other things, the need to resolve formatting issues with certain items of discovery produced by the Government; the volume of discovery disclosed by the Government; the preparation of a joint motion; and, in the case of Defendant Xinhua Xiong, the need to review discovery with the assistance of a Chinese Mandarin dialect interpreter. ECF Nos. 118 at 1-2, 120 at 1, 122 at 1. No objections have been filed.¹

Additionally, beginning on March 13, 2020, and continuing thereafter, the Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.² On June 1, 2022, the Chief Judge entered General Order No. 36, which allows limited in-person proceedings for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone

¹ To the extent Defendant Ying Chen's motion can be read as indicating opposition by Defendant Jing Chen to the requested extension, no formal objection was filed by Defendant Jing Chen. At the status conference, counsel for Defendant Jing Chen opposed the extension sought by her co-defendants consistent with grounds raised in the pretrial motions she has filed with the Court.

² All General Orders related to the COVID-19 pandemic may be found on the Court's website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 36 (D. Minn. June 1, 2022). General Order No. 36 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 36 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant's consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.³ General Order No. 36 further provides that the presiding judge will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19. **Accordingly, should a defendant file pretrial motions, counsel shall also file a letter indicating whether that defendant consents to a motions hearing by videoconference.** *See also, e.g.*, ECF No. 44.

Pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting a continuance outweigh the best interests of the public and Defendants in a speedy trial and such continuance is necessary to provide Defendants and their counsel reasonable time necessary for effective preparation and to make efficient use of the parties' resources.

Excepting the issues raised in Defendant Jing Chen's Motion to Dismiss for Pre-Indictment Delay, ECF No. 24, and Amended Motion to Dismiss for Pre-Indictment Delay,

³ *See also* General Order No. 37, which went into effect on June 19, 2022, vacated General Order No. 35, and extended the Court's authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act "[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota." *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 37 (D. Minn. June 17, 2022).

ECF No. 80, which shall be addressed separately, the Court will grant an extension of 60 days. Because “[e]xclusions of time attributable to one defendant apply to all codefendants,” *United States v. Mallett*, 751 F.3d 907, 911 (8th Cir. 2014) (quotation omitted); *see also United States v. Arrellano-Garcia*, 471 F.3d 897, 900 (8th Cir. 2006), this period of time will be excludable as to all Defendants, including Jing Chen.

Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. With respect to Defendant Jing Chen’s Motion to Dismiss for Pre-Indictment Delay, ECF No. 24, and Amended Motion to Dismiss for Pre-Indictment Delay, ECF No. 80 (collectively “Pre-Indictment Delay Motions”):

- a. The Government shall respond to the Pre-Indictment Delay Motions on or before **September 6, 2022**;
- b. Defendant Jing Chen shall file an Amended Notice of Intent to Call Witnesses solely as to the Pre-Indictment Delay Motions on or before **September 6, 2022**;
- c. Defendant Jing Chen may file a reply to the Government’s response on or before **September 13, 2022**;
- d. Any Responsive Notice of Intent to Call Witnesses as to the Pre-Indictment Delay Motions shall be filed on or before **September 13, 2022**; and
- e. A hearing on the Pre-Indictment Delay Motions shall take place before the undersigned on **September 19, 2022, at 10:00 a.m.**, in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

2. Defendant Jing Chen’s arraignment, ECF No. 117 at 5, is **CONTINUED** and shall take place before the undersigned on **September 19, 2022, at 10:00 a.m.**, in

Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Defendant Ying Chen's 5th Motion for Extension of Time to File Pretrial Motions, ECF No. 118, is **GRANTED**.

4. Defendant Li Yang's Motion for Extension of Time to File Pretrial Motions, ECF No. 122, is **GRANTED**.

5. Xinhua Xiong's Fifth Motion for [Continuance and to] Exclude Time Under Speedy Trial Act, ECF No. 120, is **GRANTED**.

6. The period of time from **August 3 through November 9, 2022**, shall be excluded from Speedy Trial Act computations in this case. *See Mallett*, 751 F.3d at 911; *Arrellano-Garcia*, 471 F.3d at 900.

7. All motions in the above-entitled case shall be filed and served consistent with Federal Rules of Criminal Procedure 12(b) and 47 on or before **October 4, 2022**. D. Minn. LR 12.1(c)(1). Two courtesy copies of all motions and responses shall be delivered directly to the chambers of Magistrate Judge Leung.

8. **Should a defendant file pretrial motions, counsel shall also file a letter on or before October 4, 2022, indicating whether that defendant consents to a motions hearing by videoconference.** *See, e.g.*, ECF No. 44.

9. Counsel shall electronically file a letter on or before **October 4, 2022**, if no motions will be filed and there is no need for hearing.

10. Except as otherwise set forth herein, all responses to motions shall be filed by **October 18, 2022**. D. Minn. LR 12.1(c)(2).

11. Except as otherwise set forth herein, any Notice of Intent to Call Witnesses shall be filed by **October 18, 2022**. D. Minn. LR. 12.1(c)(3)(A).

12. Except as otherwise set forth herein, any Responsive Notice of Intent to Call Witnesses shall be filed by **October 21, 2022**. D. Minn. LR 12.1(c)(3)(B).

13. A motions hearing will be held pursuant to Federal Rules of Criminal Procedure 12(c) where:

- a. The government makes timely disclosures and a defendant pleads particularized matters for which an evidentiary hearing is necessary; or
- b. Oral argument is requested by either party in its motion, objection or response pleadings.

14. Except as otherwise set forth herein, the motions hearing, if required, shall take place before the undersigned on **November 9, 2022, at 10:00 a.m.**, in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota. D. Minn. LR 12.1(d).

15. **TRIAL:**

- a. **IF NO PRETRIAL MOTIONS ARE FILED BY A DEFENDANT, the following trial and trial-related dates are:**

All voir dire questions and jury instructions must be submitted to Chief District Judge John R. Tunheim on or before **November 21, 2022**.

This case must commence trial on **November 28, 2022, at 9:00 a.m.** before Chief District Judge Tunheim in **Courtroom 14E**, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota.

- b. **IF PRETRIAL MOTIONS ARE FILED, the trial date, and other related dates, will be rescheduled following the ruling on pretrial**

motions. Counsel must contact the Courtroom Deputy for Chief District Judge Tunheim to confirm the new trial date.

Dated: August 22, 2022

s/ Tony N. Leung
TONY N. LEUNG
United States Magistrate Judge
District of Minnesota

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